

Merck & Co., Inc.  
P.O. Box 2000  
Rahway, NJ 07065  
Patent Department

FWM

9201

## Facsimile Cover Sheet

**TODAY'S DATE:** June 16, 2005

**PLEASE DELIVER THE FOLLOWING MATERIALS TO:**

Examiners Name: not yet assigned

Examiner/Group Telefax Number: OIPE Customer Service of the U.S. Patent & Trademark Office  
703 308-7751

**THIS MESSAGE IS FROM:**

Name: J. Mark Hand, Esq.

**RECEIVED**

Phone No.: (732) 594-3905

DEC 07 2006

Mail Location: RY60-30

**OFFICE OF PETITIONS**

Telefax No.: (732) 594-4720

**RE:** U.S. Appl. Serial No.: 09/888,304

Filing Date: 6/22/2001

Applicants File Ref: 20703Y

For: POLYNUCLEOTIDE VACCINE ADJUVANTS AND FORMULATIONS  
CONTAINING CATIONIC SURFACTANTS AND METHODS OF USE

**NUMBER OF PAGES BEING TRANSMITTED (INCLUDING COVER):** 12

Responsive to 'Notice of Abandonment under 37 CFR 1.53(f) or (g) mailed 4/22/05 Confirmation No. 9551, please find the following:

1. Petition to Withdrawal of Abandonment, 37 CFR 1.181(a)
2. Exhibit A - true copy of originally filed reply mailed 9/27/2001;
3. Exhibit B - copy of internal postcard sent with reply;
4. Copy of Confirmation Letter No. 9551 mailed on 4/22/05 to applicants.

IF THIS COPY BEING FAXED IS OF A POOR QUALITY OR NOT READABLE, APPLICANTS WOULD VERY MUCH APPRECIATE A  
BE MADE TO DR. HAND AT 732 594-3905 TO ADVISE HIM, IF AT ALL POSSIBLE, SINCE THERE IS A RUNNING DUE DATE.  
Thank you.

**IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL (732) 594-4796**

### CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that the above-identified papers are being facsimile transmitted to the United  
States Patent and Trademark Office on the date shown below

*ALINA T. ROCHE*

Type or print name of person signing certification

*Alina T. Roche*

*June 16, 2005*

Signature

Date

**BEST AVAILABLE COPY**

PATENT  
*#A*

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Robert K. Evans	
Serial No.:	09/888,304	Case No.: 20703Y
Filed:	22 June 2001	
For:	POLYNUCLEOTIDE VACCINE ADJUVANTS AND FORMULATIONS CONTAINING CATIONIC SURFACTANTS AND METHODS OF USE	

Art Unit:  
Confirmation No. 9551  
Examiner:  
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**DEC 07 2006**

## OFFICE OF PETITIONS

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT, 37 C.F.R. 1.181(a)**

Sir:

In response to the Notice of Abandonment Under 37 C.F.R. 1.53 (f) or (g), (herein, "Notice of Abandonment") mailed 22 April 2005, please consider the following Petition, entered under 37 C.F.R. 1.181(a), to withdraw this Notice of Abandonment in regard to the above-identified application. Time for responding to the Notice of Abandonment has been set for 22 June 2005. In the event any fee is due for entry and/or consideration of this Petition, please charge Deposit Account No. 13-2755 any appropriate fee, as a large entity. Please credit any overpayment to Deposit Account No. 13-2755.

**CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. 1.8(a)**

I hereby certify that this correspondence is being facsimile transmitted to OIPE Customer Service of the U.S. Patent and Trademark Office via facsimile number 703-308-7751 on the date appearing below.

MERCK &amp; Co., Inc.

By Geixa J. Roche Date: June 16, 2005

U.S. Appl. Serial No.:09/888,304  
Merck Case No.:20703Y  
Petition Under 37 C.F.R. 1.181(a)  
Confirmation No. 9551  
Page-2-

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**DEC 07 2006**

**REMARKS**

**OFFICE OF PETITIONS**

A Notice of Abandonment Under 37 C.F.R. 1.53 (f) or (g), (herein, "Notice of Abandonment") was mailed 22 April 2005 in regard to the above-identified application. Applicant respectfully requests, by Petition under 37 C.F.R. 1.181(a), reconsideration and withdrawal of the Notice of Abandonment entered in this application.

A true copy of the originally filed reply is attached as Exhibit A. These papers were filed in response to a Notice to File Missing Parts of Nonprovisional Application, mailed 10 August 2001, requesting submission of an executed oath and declaration in the above-identified application. In response to this Notice to File Missing Parts, Applicants submitted under "First Class Mail Certificate," the following: (i) Fee Transmittal Sheet; (ii) oath and declaration executed by Robert K. Evans on 06 September 2001; and, (iii) a copy of the Notice to File Missing Parts of Nonprovisional Application (of which an additional Certificate of Mailing was executed for that specific paper).

Attached as Exhibit B is a photocopy of the internal postcard prepared and included with the above-mentioned papers. The undersigned attorney respectfully notes that, to date, our office has not received a properly itemized date-stamped version of this postcard as receipt from the PTO.

This Petition is filed in response to the Notice of Abandonment, issued recently on 22 April 2005. To this end, entry of this Petition, under 37 C.F.R. 1.181(a) is timely.

The undersigned attorney executed each Certificate of Mailing shown in the originally filed papers. I have a reasonable basis to expect that the papers in question were deposited with the U.S. Postal Service as first class mail, on 27 September 2001, almost two weeks prior to the deadline of 10 October 2001 for submission of a proper response to the Notice to File Missing Parts.

U.S. Appl. Serial No.:09/388,304  
Merck Case No.:20703Y  
Petition Under 37 C.F.R. 1.181(a)  
Confirmation No. 9551  
Page-3-

Therefore, Applicant respectfully requests reconsideration and withdrawal of the Notice of Abandonment mailed in the above-identified application. Early action to that end is earnestly solicited.

Respectfully submitted,

Date: 16 June 2005

By:

  
J. Mark Hand  
Reg. No. 36,545  
Attorney for Applicant  
Merck & Co., Inc.  
P.O. Box 2000  
Rahway, NJ 07065-0907  
(732) 594-3905

JUN. 16. 2005 2:26PM

MERCK&amp;CO 732 594 4720

U. S. Patent and Trademark Office  
SUBSTITUTE TO S/ 5 U.S.C. § 151  
NO. 250 5/1/2005  
COMMERCE AL (FY 2005)**FEE TRANSMITTAL**

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT

\$130

Complete if Known

Application Number	09/888,304
Filing Date	June 22, 2001
First Named Inventor	Robert K. Evans
Examiner Name	
Group Art Unit	
Attorney Docket Number	20703Y

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DEC 07 2001

**METHOD OF PAYMENT** (Check one)

1.  The Commissioner is hereby authorized to charge indicated fees and credit any overspayments or

Deposit Account Number

13-2755

Deposit Account Name

Merck &amp; Co., Inc.

- Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17

2.  Payment Enclosed:

 Check     Money Order     Other**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity Fee Code (\$)	Entity Fee	Fee Description	Fee Paid
101	710	Utility filing fee	
106	320	Design filing fee	
108	710	Reissue filing fee	
114	150	Provisional filing fee	
<b>SUBTOTAL(1)</b>			\$0

**2. EXTRA CLAIM FEES**

Total Claims	Independent Claims	Multiple Dependent Claims	Extra	Fee from below	Fee Paid
				0 x \$18 =	0
				0 x \$80 =	0
				x \$270 =	

\*\* or number previously paid, if greater; For Reissues, see below

Large Entity Fee Code (\$)	Entity Fee	Fee Description
103	18	Claims in excess of 20
102	80	Independent claims in excess of 3
104	270	Multiple dependent claim, if not paid
109	80	** Reissue independent claims over original patent
110	18	** Reissue claims in excess of 20 and over original patent
<b>SUBTOTAL(2)</b>		

\$0

**FEE CALCULATION (continued)****OFFICE OF PETITIONS****3. ADDITIONAL FEES**

Large Entity Fee Code (\$)	Entity Fee	Fee Description	Fee Paid
105	130	Surcharge - late filing fee or cash	130
147	2,520	For filing a request for reexamination	
115	110	Extension for reply within first month	
116	390	Extension for reply within second month	
117	890	Extension for reply within third month	
118	1,390	Extension for reply within fourth month	
128	1,890	Extension for reply within fifth month	
119	310	Notice of Appeal	
120	310	Filing a brief in support of an appeal	
121	270	Request for oral hearing	
140	110	Petition to revive - unavoidable	
141	1,240	Petition to revive - unintentional	
142	1,240	Utility issue fee (or reissue)	
143	440	Design issue fee	
122	130	Petitions to the Commissioner	
123	50	Petitions related to provisional applications	
126	180	Submission of Information Disclosure Statement	
581	40	Recording each patent assignment per property (times number of properties)	
146	710	Filing a submission after final rejection (37 CFR 1.129(a))	
149	710	For each additional invention to be examined (37 CFR 1.129(b))	
179	710	Request for Continued Examination (RCE)	
Other fee (specify) _____			
Other fee (specify) _____			
<b>SUBTOTAL(3)</b>			\$130

**SUBMITTED BY**

Complete (if applicable)

Typed or Printed Name	J. Mark Hand	Reg. Number	36,545
Signature		Date	9/27/01

Computer generated form "Miscellaneous Fee Sheet" (Fees Pdtr), Merck &amp; Co., Inc.

EXHIBIT A

JUN. 16. 2005 2:28PM

MERCK&CO 732 594 4720

NO. 250 P. 6

Application Number:

09/888,304

Filing Date:

06/22/2001

First Named Inventor:

Robert K. Evans

Group Art Unit:

\_\_\_\_\_

Examiner Name:

\_\_\_\_\_

Attorney Docket Number:

20703Y

**FIRST CLASS MAIL CERTIFICATE**

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON, D.C. 20231, ON THE DATE APPEARING BELOW.

MERCK & CO., INC.

MAILED BY

J. Mark Hand

DATE 9/27/01

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DEC 07 2006

OFFICE OF PETITIONS

JUN. 16. 2005 2:29PM

MERCK&amp;CO 732 594 4720

Approved for use on NO. 250 ~~001~~ or P. 7-0032  
SUBSTITUTE for PTO/SB/01 (12-97), DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION

**DECLARATION AND  
POWER OF ATTORNEY  
FOR UTILITY OR DESIGN  
PATENT APPLICATION  
(37 CFR 1.63)**

Declaration  
Submitted  
with Initial  
Filing

OR

Declaration  
Submitted after Initial  
Filing (surcharge  
(37 CFR 1.16 (e))  
required)

Attorney Docket Number	20703Y
First Named Inventor	Robert K. Evans
<b>COMPLETE IF KNOWN</b>	
Application Number	09/888,304
Filing Date	June 22, 2001
Group Art Unit	
Examiner Name	

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**OFFICE OF PETITIONS**

As a below named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**POLYNUCLEOTIDE VACCINE ADJUVANTS AND FORMULATIONS CONTAINING CATIONIC SURFACTANTS, AND  
METHODS OF USE**

(Title of the Invention)

the specification of which

 is attached hereto

OR

 was filed on (MM/DD/YYYY) 06/22/2001 as United States Application Number or PCT InternationalApplication Number 09/888,304 and was amended on (MM/DD/YYYY)                  (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose to the Patent and Trademark Office all information known to me to be material to patentability as defined in 37 CFR 1.56.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America listed below and have also identified below, by checking the box, any foreign application for patent or inventor's certificate, or of any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Attorney Docket Number	Priority Claimed? YES      NO
				<input type="checkbox"/> <input type="checkbox"/>
				<input type="checkbox"/> <input type="checkbox"/>
				<input type="checkbox"/> <input type="checkbox"/>
				<input type="checkbox"/> <input type="checkbox"/>
				<input type="checkbox"/> <input type="checkbox"/>

Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

I hereby claim the benefit under 35 U.S.C. 119(e) of any United States provisional application(s) listed below.

Application Number(s)	Filing Date (MM/DD/YYYY)	Attorney Docket Number
60/213,622	06/23/2000	20703PV
60/214,824	06/28/2000	20703PV2

**DECLARATION AND POWER OF ATTORNEY for Utility or Design Patent Application**

I hereby claim the benefit under 35 U.S.C. 120 of any United States application(s), or 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. 112, I acknowledge the duty to disclose information known to me to be material to patentability as defined in 37 CFR 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. Parent Application or PCT Parent Application Number	Parent Filing Date (MM/DD/YYYY)	Parent Patent Number (If applicable)

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**OFFICE OF PETITIONS**

Additional U.S. or PCT international application numbers are listed on a supplemental priority data sheet PTO/SB/02B attached hereto.

As a named inventor, I hereby appoint, respectively and individually, as my attorneys or agents with full power of substitution and revocation, the following registered practitioner(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

Customer Number  →  Registered practitioner(s) name/registration number listed below

Place Customer Number  
Bar Code Label here

Name	Registration Number	Name	Registration Number
J. Mark Hand	36,545	Jack L. Tribble	32,633

Direct all correspondence to:  Customer Number or Bar Code Label**000210**

Name	J. Mark Hand				
Address	Merck & Co., Inc., Patent Department				
Address	P.O. Box 2000, RY60-30				
City	Rahway	State	NJ	ZIP	07065-0907
Country	USA	Telephone	(732)594-3905		Fax (732)594-4720

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name of Sole or First Inventor:	<input type="checkbox"/> A petition has been filed for this unsigned inventor				
Given Name (first and middle [if any])			Family Name or Surname		
Robert K.		Evans			
Inventor's Signature	<i>Robert K. Evans</i>			Date	06 Sept 2001
Residence: City	Souderton	State	PA	Country	USA
Post Office Address	Merck & Co., Inc., P.O. Box 2000				
City	Rahway	State	NJ	ZIP	07065-0907
<input type="checkbox"/> Additional inventors are being named on the _____ supplemental Additional Inventors(s) sheet(s) PTO/SB/02A attached hereto.					

JUN. 16. 2005 2:29PM

MERCK&CO 732 594 4720

NO. 250

P. 9

Page 1 of 1



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/888,304	06/22/2001	Robert K. Evans	20703Y

000210  
MERCK AND CO INC  
P O BOX 2000  
RAHWAY, NJ 070650907

CONFIRMATION NO. 9651  
FORMALITIES LETTER

0000000006412273

Date Mailed: 08/10/2001

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

*Filing Date Granted*

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 130.

*A copy of this notice MUST be returned with the reply.*

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*Eduardo A. Rodriguez*  
Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

OFFICE OF PETITIONS

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231, on the date appearing below.

By *J. Marshall Evans* Date *9/27/01*,  
Rec. No. *36,545*

ପ୍ରକାଶିତ କାହାର ଦେଖିଲୁ ନାହିଁ ।

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## **OFFICE OF PETITIONS**

## **P&T OFFICE ACKNOWLEDGEMENT**

ATTORNEY J. M. Hand		DATE 9/27/01
CASE NUMBER/ <b>20703Y</b>	SERIAL NUMBER <b>09/888,304</b>	
DATE FILED <b>6/22/01</b>		
APPLICANT <b>Robert K. Evans</b>		
EXPRESS MAIL NO.		

The Patent & Trademark Office acknowledges, and has stamped hereon, the date of the receipt of the items checked below:

- AMENDMENT
  - APPEAL AND FEE
  - ASSIGNMENT
  - BRIEF
  - CERTIFICATE OF CORRECTION
  - FINAL FEE
  - LETTER
  - REQUEST FOR F.F. LICENSE
  - INFORMATION DISCLOSURE STATEMENT
  - PTO 1449 & REFERENCES
  - PETITION FOR EXTENSION OF TIME & FEE
  - INVITATION TO CORRECT
  - DEMAND-CHAPTER II & FEE SHEET
  - Notice to File Missing Parts (9551)
  - Originally signed Declaration
  - Fee Transmittal Form \$130 surcharge

F4424

**EXHIBIT B**



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

FWM  
9/20/05

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/888,304	06/22/2001	Robert K. Evans	20703Y

CONFIRMATION NO. 9551

ABANDONMENT/TERMINATION  
LETTER

\*OC000000015822740\*

Date Mailed: 04/22/2005

## NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 08/10/2001.

- No reply was received.

If a complete reply to the notice was previously filed by applicant within the time period set forth in the notice, applicant may request for reconsideration of the holding of abandonment within 2 months from the mailing of this notice of abandonment by filing a petition to withdraw the holding of abandonment under 37 CFR 1.181(a). No petition fee is required. The petition must be accompanied by a true copy of the originally filed reply and the item(s) identified in one of the following:

1. A properly itemized date-stamped postcard receipt (see MPEP § 503);
2. If the originally filed reply included a certificate of mailing or transmission in compliance with 37 CFR 1.8(a), a copy of the certificate of mailing or transmission and a statement in compliance with 37 CFR 1.8(b) (see MPEP §§ 512); or
3. If the reply was filed via Express Mail, a submission satisfying the requirements of 37 CFR 1.10(e) including, for example, a copy of the Express Mail mailing label showing the "date-in" (see MPEP § 513).

Any petition to withdraw the holding of abandonment should be directed to OIPE.

If applicant did not previously file a complete reply within the time period set forth in the notice, applicant may file a petition to revive the application under 37 CFR 1.137.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of UNAVOIDABLE DELAY must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d). See MPEP § 711.03(c) and Form PTO/SB/61.

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of UNINTENTIONAL DELAY must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37

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NO. 250

P. 12  
of 2

CFR 1.137(d). See MPEP § 711.03(c) and Form PTO/SB/64.

Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (571) 272-3282.

---

*A copy of this notice MUST be returned with the reply.*

Teguest Woldeyes  
Office of Initial Patent Examination (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

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